IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

Bail Appl..No. 5786 of 2007()

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CC.348/2003 of J.M.F.C., MANNARKAD

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PETITIONER/IST ACCUSED

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MOHAMMED BHASHA, S/O.BHAVA,
KURIKKATTIL HOUSE, KOMBAM P.O.,
KODAKKADE, MANNARKKAD, PALAKKAD
DISTRICT.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS: COMPLAINANT

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STATE OF KERALA, THROUGH THE
SUB INSPECTOR OF POLICE,
NATTUKAL POLICE STATION,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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**B.A. No. 5786 OF 2007**

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**Dated this the 25th day of September, 2007**

**ORDER**

Application for anticipatory bail. The petitioner is the 1st accused, he being a husband of the de facto complainant. He faces allegations for offences punishable, inter alia, under Sec.498-A of the IPC. Investigation is now complete. Final report has been filed. The petitioner was earlier enlarged on bail. The petitioner was not available for trial. The case against him was split up. The co-accused have already faced trial and have been acquitted, it is submitted. Coercive processes have been issued against the petitioner by the learned Magistrate. The petitioner finds a warrant of arrest issued by the learned Magistrate chasing him. The case was initiated as early as in 2003.

2. According to the petitioner, he is absolutely innocent.

His failure to appear before the learned Magistrate was not wilful or deliberate. He was employed abroad and that is why he could not be present before the learned Magistrate. The petitioner, in these circumstances, wants to surrender before the learned Magistrate and seek regular bail. The petitioner apprehends that his application for regular bail may not be considered by the learned Magistrate on merits in accordance with law and expeditiously. He further apprehends that before he surrenders before the learned Magistrate, he may be arrested and dragged to court in execution of the non-bailable warrant of arrest issued by the learned Magistrate. It is prayed that directions under Sec.438 and/or Sec.482 of the Cr.P.C. may be issued in favour of the petitioner.

3. The learned Public Prosecutor opposes the application. The petitioner has been absconding for a long period of time without any justification. He may be directed to surrender before the learned Magistrate and seek regular bail, submits the learned Public Prosecutor.

4. I have considered all the relevant inputs. After the decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662), it is by now trite that powers under

Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

4. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned

Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

**Sd/-**

**(R. BASANT, JUDGE)**

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P.S. to Judge